IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2007

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR

W.P.No.26824 of 2006
(O.A.No.636 of 1994)

Ramachandran ... Petitioner

Versus

1. The Divisional Forest Officer,
Coimbatore, Division, Coimbatore.

2. The District Forest Officer,
Sathyamangalam, Periyar District. ... Respondents

This petition came to be numbered by transfer of O.A.No.636 of 1994 from the file of the Tamil Nadu Administrative Tribunal praying for Certiorari, to call for the records in Na.Ka.No.3335/90 Pa2, dated 29.09.1992 passed by the second respondent as confirmed by the first respondent in No.30692/92 Pa 2, dated 30.08.1993 and quash the same.

For Petitioner : Mr.S.Mani

For 1st Respondent : Mr.A.N.Purushothaman,
Government Advocate

O R D E R

The petitioner has sought for a Writ of Certiorari to quash the order of the second respondent, dated 29.09.1992, confirming the order of the first respondent, dated 30.08.1993 and for further orders.

2. Brief facts leading to the Writ Petition are as follows:
When the petitioner was working as Ranger in Sathyamangalam Forest Range, a charge memo, dated 09.07.1990 was served on him under Rule 17(b) of the Tamil Nadu Civil Services Discipline and Appeal Rules, (in short "the Rules"), alleging that during inspection by the squad, there were felling of 55 teak woods, apart from 44 teak blocks. Without even submitting an explanation to the charge memo, the petitioner challenged the same in O.A.No.2530 of 1990 before the Tamil Nadu Administrative Tribunal and the same was admitted. Though the petitioner was directed to submit his explanation, he sent a reply to the authority that in view of the pendency of the Original Application, the proceedings initiated against him should be deferred. Inspite of his request, the respondents had proceeded with the departmental enquiry and by proceedings dated 25.09.1992,

inflicted a penalty of stoppage of increment. When the said Original Application came up for final hearing, the Tribunal directed the petitioner to prefer an appeal before the appellate authority and dismissed the Original application. The grievance of the petitioner is that the disciplinary authority ought to have awaited for the result in the Original Application, which was pending on the file of the Administrative Tribunal and ought not have proceeded with the enquiry.

3. On merits, the petitioner has contended that due to atrocities committed in those areas, he could not enter into the disputed area for effective supervision. The petitioner has further contended that on the basis of stems, no charges could be framed, because there are guidelines to assess the age of the stems and it would be difficult to identify the persons in whose period, the trees were cut and removed.

4. The petitioner has further contended that since the punishment of stoppage of increment with cumulative effect for the period of two years, has got effect on pension, the respondents ought to have conducted an enquiry under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. He further submitted that the copy of the enquiry report was not furnished, so as to enable him to make his effective representation on the findings of the enquiry officer. He has further contended that in the absence of the enquiry, as contemplated under Rule 17(b) of the abovesaid Rules, the consequential punishment of penalty of stoppage of increment is liable to be set aside.

5. The respondents have filed their counter affidavit and submitted that the petitioner was working as a Forester in Ekkathur Section of Santhyamangalam Division, from 23.06.1989 to 09.04.1990. Charges were framed against him under Rule 17(b) of the Rules, for the failure to prevent large scale teak wood fellings and he was given sufficient opportunity to submit his explanation. On his failure to submit any explanation, the District Forest Officer, Sathyamangmalam Division, after conducting an enquiry into the charges, found that the petitioner had committed the delinquency as mentioned in the charge memo and thereafter a penalty of stoppage of increment for two years with cumulative effect was inflicted. Against which, the petitioner has preferred an appeal and the same was rejected on 30.09.1993.

6. The respondent has contended that inasmuch as there was no stay of disciplinary proceedings, the District Forest officer, proceeded with the enquiry and finalised the departmental proceedings initiated against the petitioner. He has further contended that the Forest Guards are mainly responsible for the protection of the Forests and that the petitioner is responsible for the large scale teak fellings. As the petitioner was given sufficient opportunity to defend the enquiry proceedings, the findings cannot be interfered with and therefore, prayed for dismissal of the Writ Petition.

Heard the counsel appearing for the parties and perused the materials available on record.

7. Before adverting to the facts of this case, it is relevant to extract sub-Clause (ii) to Rule 17(b) and it reads as follows:
"After the enquiry or personal hearing referred to clause (i) has been completed, the authority competent to impose the penalty specified in that clause is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified in Rule 8 should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be, and call upon him to submit his further representation, if any, within a reasonable time, not exceeding fifteen days. Any representation received in his behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed."

8. Reading of the punishment order reveals that the delinquent was directed to submit his explanation within 15 days from the date of charge memo and since the explanation was not been submitted, despite several notices and in the absence of any stay order from the Tribunal, the Disciplinary Authority has proceeded on the basis of the report submitted by the District Conservator of Forest, STF, Salem and found that the charges levelled against the petitioner as proved.

9. Rule 17(b) of the above said Rules mandates that the findings of the Enquiry Officer, based on the available evidence, should have been given to the delinquent officer to submit his further representation, if any, within a reasonable time not exceeding 15 days. An opportunity should be given to the delinquent to make his representation on the findings recorded by the Enquiry Officer.

10. The Disciplinary Authority has merely relied on a report of the Assistant Conservator of Forest, STF, Salem and passed the order of penalty. It is evident from both the orders of the disciplinary authority, dated 29.09.1992 and the appellate authority, dated 30.08.1993, that the procedure contemplated under Rue 17(b) of the Tamil nadu Civil Services (Discipline and Appeal) Rules, has not been followed. Therefore, I am of the view that the respondents have failed to comply with the procedure contemplated under Section 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, before inflicting the order of penalty and thereby, deprived the rights of the petitioner.

11. In these circumstances, the orders of the appellate authority, dated 29.09.1992 as well as the disciplinary authority, dated 30.08.1993 are set aside and the matter is remitted back to the disciplinary authority to follow the procedure as contemplated under the above said Rules. The petitioner shall co-operative with the
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enquiry. The enquiry shall be completed within a period of three months from the date of receipt of a copy of this order.

13. With the above directions, the Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

28.08.2007
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To
1. The Divisional Forest Officer,
Coimbatore, Division, Coimbatore.

2. The District Forest Officer,
Sathyamangalam, Periyar District.